

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF BEREA COLLEGE AND THE)
CITY OF BEREA FOR AN ORDER AUTHORIZING THE) CASE NO.
TRANSFER OF UTILITY ASSETS PURSUANT TO) 2004-00331
KRS 278.020(5) AND (6))

O R D E R

On September 3, 2004, Berea College and the city of Berea ("Berea") (collectively "Joint Applicants") filed, pursuant to KRS 278.020(4) and (5), a joint application for Commission approval of the proposed transfer of Berea College utility assets to Berea.

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), and Southern Madison Water District ("Southern Madison") were granted full intervention in this proceeding. The Commission established a procedural schedule for this case on September 27, 2004 and on October 12, 2004, scheduled the matter for hearing and extended the review period up to and including January 3, 2005. On November 22, 2004, the Commission, finding that the record was complete for decision and that no party or member of the public had expressed an interest in attending the scheduled hearing, cancelled the hearing and ordered the matter submitted for decision.

Having considered the application and being otherwise sufficiently advised, the Commission finds that:

1. Berea College is a Kentucky non-profit corporation that owns and operates an electric distribution system and a water treatment and distribution system in Madison County, Kentucky that serves approximately 4,695 electric customers and approximately 3,868 water customers for compensation in and around the city of Berea.¹ It further provides wholesale water service to Garrard County Water District and Southern Madison.

2. Berea is a Kentucky municipal corporation and a city of the fourth class duly organized and operating under Chapter 81 of the Kentucky Revised Statutes.

3. On June 18, 2004, the Joint Applicants executed a Utility Asset Purchase Agreement (“Agreement”), which provides that the closing of this transaction shall take place on December 31, 2004; however, the parties, by mutual agreement, may defer the closing to no later than March 31, 2005. The Agreement also provides for the transfer to Berea of the tangible assets of Berea College’s electric distribution system and its water treatment and distribution system, which include, among other things, the raw water intake structures, pump stations, mains, easements, rights-of-way, and accounts receivables. It does not include Berea College’s existing dams, reservoirs and watersheds. The Agreement further provides that Berea will pay Berea College \$18,336,878 at the close of the transaction and assume certain obligations, agreements, liabilities and debts of Berea College, including deposits for line extensions and service connections.

¹ Annual Report of Berea College Electric Utility and Berea College Water Utility to the Public Service Commission of Kentucky for the Year Ended December 31, 2003.

4. On June 18, 2004, the Joint Applicants executed a Water Withdrawal Agreement which grants Berea an exclusive license to withdraw raw, untreated water from Berea College's reservoirs up to and including a maximum withdrawal of 4,000,000 gallons of raw water per day with the exception that Berea may exceed the daily limitation by as much as 10 percent on any given day for not more than 60 days during any calendar year.²

5. The Joint Applicants will enter into lease agreements wherein Berea College will lease to Berea a suite of offices and parking area located in and near Berea College's Heat Plant Building and certain property located at 513 Scaffold Cane Road for a utility yard and storage facility.

6. Berea College currently acquires wholesale electric power from Kentucky Utilities Company pursuant to contract which it will assign to Berea at the close of the transfer.

7. The Board of Trustees of Berea College adopted a resolution on February 28, 2004 granting preliminary approval of the transfer of Berea College's electric and water utility assets to Berea. On July 26, 2004, the Executive Committee of the Board of Trustees of Berea College adopted a resolution approving the transfer of Berea College's electric and water utility assets to Berea.

8. The City Council of Berea adopted a resolution approving and ratifying the Utility Asset Purchase Agreement.

9. Since 1961 Berea has provided sewage collection and treatment services to Berea residents through the Berea Sewer Commission ("Sewer Commission"). The

² Water Withdrawal Agreement at 1.

Sewer Commission had total assets, retained earnings, and cash on hand as of June 30, 2003 of \$16,401,850, \$3,146,489, and \$8,075,507, respectively.

10. If the transfer is approved, Berea plans to create the Berea Municipal Utilities Department and merge the newly acquired electric and water systems into its current sewer operations.

12. Berea has the statutory authority to issue revenue bonds and general obligation bonds to support its water and electric operations. KRS 58.020, *et seq.*

13. All employees of Berea College's electric and water operations have been offered employment with Berea.

14. Berea has agreed to adopt the rates currently charged by Berea College.

Based upon these findings, the Commission makes the following conclusions of law:

1. KRS 278.010(3) defines a utility as "any person except . . . a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with . . . (a) [t]he generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses; . . . (d) [t]he diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation."

2. Berea College owns and operates utilities that are subject to Commission jurisdiction. KRS 278.010(3)(a) and (d).

3. Berea is a municipality that is not currently subject to the jurisdiction of this Commission.

4. KRS 278.020(4) provides:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

5. KRS 278.020(5) provides:

No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. . . . The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest.

6. Berea has the financial, technical, and managerial abilities to provide reasonable electric and water service to those persons currently served by Berea College.

7. Upon completion of this transfer, Berea will not be subject to Commission jurisdiction except to the extent it provides utility service to a public utility. Simpson County Water Dist. v. City of Franklin, Ky., 872 S.W.2d 460 (1994).

8. Approval of this transfer will not prevent or limit this Commission from reviewing the operation of Berea College's fuel adjustment clause and directing refunds of any inappropriate or improper charges collected prior to the transfer.

9. The proposed transfer is in accordance with law, is for a proper purpose, and is consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of assets from Berea College to Berea is approved, subject to Berea assuming all responsibility for customer deposits paid to Berea College.
2. Within 10 days of completion of the proposed transfer of assets, the Joint Applicants shall notify the Commission, in writing, of the completion of the transfer.
3. Berea College shall be responsible for submitting to the Commission a financial and statistical report, as described in 807 KAR 5:006, Section 3, for the period in calendar year 2004 and 2005 during which it owns and operates the transferred assets.
4. Within 10 days of the date of completion of the proposed transfer of assets, Berea shall file an adoption notice adopting rates and services as they apply to the provision of wholesale water service to Garrard County Water District and Southern Madison.

Done at Frankfort, Kentucky, this 9th day of December, 2004.

By the Commission

ATTEST:



Executive Director